

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ABSOLEM STEVEN-JAMAR THOMAS,

Petitioner,

Case No. 1:04-cv-482

v.

Hon. Gordon J. Quist

BARBARA BOUCHARD,

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. The court has dismissed petitioner's habeas action without prejudice and petitioner has filed a notice of appeal (docket 44). This matter is now before the court to determine the issuance of a certificate of appealability.

Under the amended provisions of the Habeas Corpus Act, a petitioner may not appeal in a habeas case unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1). Rule 22 of the Federal Rules of Appellate Procedure extends to district judges the authority to issue a certificate of appealability. Fed. R. App. P. 22(b). *See Lyons v. Ohio Adult Parole Auth.*, 105 F.3d 1063, 1073 (6th Cir.1997). Under 28 U.S.C. § 2253(c)(2), the court must determine whether a certificate of appealability should be granted. A certificate should issue if petitioner has demonstrated a "substantial showing of a denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(2).

Petitioner's notice of appeal did not specify the issues that he sought to have reviewed

on appeal. Under these circumstances, the court will deem his motion as a request for review of all issues. *See In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997) (Admin. Ord.) (filing of a notice of appeal that does not specify the issues that petitioner seeks to have reviewed on appeal will be deemed a request for review of all issues).

This Court denied petitioner's application on procedural grounds. "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, [1] that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and [2] that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Both showings must be made to warrant the grant of a certificate. *Id.* at 484-85.

Applying these standards, the court finds no basis for issuance of a certificate of appealability. Petitioner has not pointed to any flaw in the court's reasoning or any issue of fact or law overlooked in the adjudication of his petition. For the reasons expressed in the magistrate judge's report and recommendation, and the court's order adopting the report and recommendation, the court concludes that reasonable jurists could not find that this court's denial of the petition was debatable or wrong.

Accordingly, a certificate of appealability is **DENIED**.

IT IS SO ORDERED.

Dated: October 11, 2007

/s/ Gordon J. Quist
Gordon J. Quist
United States District Judge